

ISDA

International Swaps and Derivatives Association, Inc.

2011 ISDA CINERGY HUB PROTOCOL

published on December 12, 2011

by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) has published this ISDA Cinergy Hub Protocol (this “**Protocol**”) to enable parties to amend the terms of Covered Protocol Documents (as defined below).

Accordingly, a party that has entered or intends to enter into a Covered Protocol Document may adhere to this Protocol and be bound by its terms by completing and delivering a letter substantially in the form of Exhibit 1 to this Protocol (an “**Adherence Letter**”) to ISDA, as agent, as described below.

1. Amendments

(a) By adhering to this Protocol in the manner set forth in Section 2 below, a party (an “**Adhering Party**”) that wishes to amend the terms of a Covered Protocol Document agrees, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, that the terms of each Covered Protocol Document, if any, between it and each other Adhering Party will be amended with effect from the Transition Date in accordance with the terms of Annex 1 to this Protocol.

2. Adherence and Effectiveness

(a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with the first sentence of Section 5(e) below, to ISDA, as agent, of an Adherence Letter on or before December 23, 2011 (the “**Cut-off Date**”) or during the Subsequent Adherence Period (as defined below) (if any). After the Cut-off Date, ISDA will not accept any further Adherence Letters to the Protocol, subject to any re-opening of the adherence period pursuant to Section 2(e) below.

(i) Each Adhering Party will deliver two copies of the Adherence Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory.

(ii) Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by the General Counsel or an appropriate officer of ISDA will be deemed to be an original.

(b) As between any two Adhering Parties:

(i) the agreement to make the amendments contemplated by this Protocol, on the terms and subject to the conditions set forth in this Protocol, will be effective on the date of receipt by

ISDA, as agent, of an Adherence Letter from the later of the Adhering Parties to adhere; and

(ii) the amendments set out in Annex 1 will apply between the Adhering Parties from that date, subject to any conditions contained in Annex 1, but in each case with effect from the relevant Transition Date whether or not the relevant date determined under (i) above falls before, on or after the Transition Date.

(c) This Protocol is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Covered Protocol Document that the parties may otherwise effect in accordance with the terms of that Covered Protocol Document.

(i) In adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise.

(ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Section will be void and ISDA will inform the relevant party of such fact as soon as reasonably possible after making such determination.

(d) Each Adhering Party acknowledges and agrees that adherence to this Protocol is irrevocable, irrespective of whether such adherence occurs on or prior to the Cut-off Date or during the Subsequent Adherence Period (if any).

(e) If ISDA determines in its absolute discretion that market interest justifies reopening adherence to this Protocol, ISDA may designate the first and final day of a subsequent adherence period (a “**Subsequent Adherence Period**”) by giving no less than ten calendar days' notice on its website at www.isda.org (or by other suitable means). In the event that adherence is re-opened, each Adherence Letter effectively delivered on any day during the Subsequent Adherence Period in accordance with the terms of this Protocol shall be deemed to have been effectively delivered.

3. Representations

Each Adhering Party represents to each other Adhering Party with which it has or may have entered into a Covered Protocol Document, on the date on which the later of them adheres to this Protocol in accordance with Section 2 above and, if then outstanding, in respect of each Covered Protocol Document between them, that:

(a) **Status.** It (i) is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or (ii) if it otherwise represents its status in or pursuant to a Covered Protocol Document, has such status;

(b) **Powers.** It has the power to execute and deliver the Adherence Letter and to perform its obligations under the Adherence Letter and the Covered Protocol Documents, in each case as amended by the Adherence Letter and this Protocol, and has taken all necessary action to authorize such execution, delivery and performance;

(c) **No Violation or Conflict.** Such execution, delivery and performance do not violate or

conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(d) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter and the Covered Protocol Documents, in each case as amended by the Adherence Letter and this Protocol, have been obtained and are in full force and effect and all conditions of any such consents have been complied with;

(e) **Obligations Binding.** Its obligations under the Adherence Letter and the Covered Protocol Documents, in each case as amended by the Adherence Letter and this Protocol, constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)); and

(f) **Credit Support.** Its adherence to this Protocol and any amendment contemplated by this Protocol will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document or Performance Assurance, as applicable, relating to the relevant Covered Protocol Document.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Covered Protocol Document that each of the foregoing representations will be deemed to be a representation for purposes of representations and warranties section of each such Covered Protocol Document entered into prior to the Transition Date between them.

4. Evidence of Capacity and Authority

Each Adhering Party may deliver to ISDA, as agent, such evidence as it deems appropriate to evidence its capacity to adhere to this Protocol and the authority of anyone signing on its behalf.

5. Miscellaneous

(a) Entire Agreement; Survival.

(i) This Protocol constitutes the entire agreement and understanding of the Adhering Parties with respect to its subject matter. Each Adhering Party acknowledges that in adhering to this Protocol it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in Annex 1 or elsewhere in this Protocol) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol will limit or exclude any liability of an Adhering Party for fraud.

(ii) Except for any amendment deemed to be made pursuant to this Protocol in respect of a Covered Protocol Document, all terms and conditions of the relevant Covered Protocol Document will continue in full force and effect in accordance with its provisions as in effect immediately prior to the Transition Date. This Protocol will, with respect to its subject

matter, survive, and any amendments deemed to be made pursuant to it will form a part of each relevant Covered Protocol Document between the Adhering Parties.

(b) **Amendments.** An amendment, modification or waiver in respect of the matters contemplated by this Protocol will only be effective if made in accordance with the terms of the Covered Protocol Document and then only with effect between the parties to that Covered Protocol Document (and will only be effective to amend or override the provisions contained in Annex 1 to this Protocol if it expressly refers in writing to this Section of this Protocol and would otherwise be effective in accordance with the amendment provision of the Covered Protocol Document).

(c) **Headings.** The headings used in this Protocol and any Adherence Letter are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Protocol or any Adherence Letter.

(d) **Governing Law.** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Covered Protocol Document between them, be governed by and construed in accordance with the law specified to govern that Covered Protocol Document and otherwise in accordance with applicable choice of law doctrine.

(e) **Notices.** Any Adherence Letter must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at CinergyHubprotocol@isda.org and will be deemed effectively delivered on the date it is delivered unless on the date of that delivery ISDA's New York office is closed or that communication is delivered after 5:00 p.m., New York time, in which case that communication will be deemed effectively delivered on the next day ISDA's New York office is open. Each Adhering Party agrees that the determination of the date and time of delivery of any Adherence Letter shall be determined by ISDA in its absolute discretion.

6. Definitions

As used in this Protocol and Annex 1, the following terms have the meanings indicated below. Each capitalized term used in this Protocol or Annex 1 but not defined herein or therein has the meaning given to that term in the 2005 ISDA Commodity Definitions, as published by ISDA (the "**Commodity Definitions**"):

"Cinergy Hub" means an aggregation of buses in the MISO region identified by MISO as comprising the "Cinergy Hub".

"Confirmation" has the meaning given to that term (or similar term, howsoever defined) in the relevant Covered Master Agreement(s).

"Covered Master Agreement" means, in respect of a Covered Transaction, the master agreement governing such Covered Transaction, whether executed by two Adhering Parties to a Covered Transaction or incorporated by reference in the Confirmation relating to such Covered Transaction, including (i) the Edison Electric Institute Master Power Purchase and Sale Agreement; (ii) any form of WSPP Agreement as published by WSPP, Inc.; (iii) the ISDA 2002 Master Agreement; (iv) the 1992 ISDA Master Agreement (Multicurrency – Cross Border); (v) the 1992 ISDA Master

Agreement (Local Currency – Single Jurisdiction); and (vi) any other similar agreement setting forth the terms and conditions governing a Covered Transaction.

“**Covered Protocol Document**” includes a Covered Transaction and a Covered Master Agreement, as applicable.

“**Covered Transaction**” means a transaction entered into prior to the Transition Date, whether documented under a Confirmation pursuant to a Covered Master Agreement or otherwise, that is:

- (i) a physically-settled transaction in respect of which the Delivery Point is Cinergy Hub (howsoever expressed) or in respect of which the price published by MISO (or any other exchange, publication or data source) for Cinergy Hub (howsoever expressed) is referenced in the definition of Contract Price (a “**Physically-Settled Covered Transaction**”); or
- (ii) a financially-settled transaction in respect of which the price published by MISO (or any other exchange, publication or data source) for Cinergy Hub (howsoever expressed) is referenced in the Floating Price or the Commodity Reference Price (a “**Cash-Settled Covered Transaction**”).

“**Indiana Hub**” means an aggregation of buses in the MISO region identified by MISO as of the Transition Date as comprising the “Indiana Hub,” as adjusted by MISO following the Transition Date.

“**Transition Date**” means the earliest date on which both Duke Ohio and Duke Kentucky have withdrawn operational control of their transmission facilities from MISO and integrated their transmission facilities into PJM.

Form of Adherence Letter

[Letterhead of Adhering Party]

December [*], 2011

Send to CinergyHubprotocol@isda.org

Dear Sirs,

2011 ISDA Cinergy Hub Protocol - Adherence

The purpose of this letter is to confirm our adherence to the ISDA Cinergy Hub Protocol as published by the International Swaps and Derivatives Association, Inc. on December 12, 2011 (the “**Protocol**”). This letter constitutes an Adherence Letter as referred to in the Protocol.

The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter, which will supplement and form part of any Covered Transaction or Covered Master Agreement, as applicable, entered into prior to, on or after the Transition Date between us and each other Adhering Party.

1. Appointment as Agent and Release

We hereby appoint ISDA as our agent for the limited purposes of the Protocol and accordingly we waive, and hereby release ISDA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol or any actions contemplated as being required by ISDA.

2. Contact Details

Our contact details for purposes of this Adherence Letter are:

Name:

Address:

Telephone:

Fax:

E-mail:

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]¹

By:

Name:
Title:
Signature:

¹ Specify legal name of Adhering Party.

ANNEX 1
No Market Disruption Event;
Modification to Delivery Point; Modification to Commodity Reference Price/Floating Price

As between the two Adhering Parties, the provisions below shall apply to any Covered Transaction that is in effect between them as of the Transition Date or that may be entered into between them on or after the Transition Date:

- (a) ***No Market Disruption Event.*** Each Covered Transaction shall be modified by adding the following:

“Notwithstanding anything to the contrary herein or in Section 7.4 of the 2005 ISDA Commodity Definitions (the “Commodity Definitions”), the transition of Duke Energy Ohio, Inc. (Duke Ohio) and Duke Energy Kentucky, Inc. (Duke Kentucky) from the Midwest Independent System Operator, Inc. (MISO) to the PJM Interconnection, LLC (PJM) and resulting transition of the EP Nodes (as defined in the MISO tariff) formerly comprising Cinergy Hub from MISO to PJM will not result in a “Price Source Disruption”, a “Material Change in Formula” or any other “Market Disruption Event” or “Additional Market Disruption Event”, each as defined in the Commodity Definitions or otherwise herein.”

- (b) ***Modification to Delivery Point for Physically-Settled Covered Transactions.*** Each Covered Transaction that references Cinergy Hub in the definition of the Delivery Point shall be amended by (i) replacing references to Cinergy Hub with a reference to Indiana Hub, and (ii) by replacing, *mutatis mutandis*, any reference to a price published by MISO (or any other exchange, publication or data source) in respect of Cinergy Hub (howsoever expressed) in the definition of Contract Price (howsoever expressed) with the corollary price published by MISO (or any other exchange, publication or data source) in respect of Indiana Hub, in either case, in respect of deliveries to be made on and after the Transition Date.

- (c) ***Modification to Commodity Reference Price/Floating Price for Cash-Settled Covered Transactions.*** Each Covered Transaction that references a price published by MISO (or any other exchange, publication or data source) in respect of Cinergy Hub (howsoever expressed) shall be amended by replacing, *mutatis mutandis*, any reference to such price with the corollary price published by MISO (or any other exchange, publication or data source) in respect of Indiana Hub in respect of calculations to be made on and after the Transition Date.